REVISIONAL CRIMINAL.

1907
July 17.

Before Mr. Justice Richards.

DEBI PRASAD, (APPLICANT) *v.* SHEODAT RAI, OPPOSITE PARTY. *

Criminal Procedure Code, sections 145, 435 *and* 537—*Revision—Procedure—Irregularity not prejudicial to either party.*

In the course of proceedings commenced under section 107 of the Code of Criminal Procedure it was found by the Magistrate that there was a dispute relating to land and likely to cause a breach of the peace between the two parties before him. After giving both an opportunity of being heard, the Magistrate passed an order under section 145 of the Code maintaining one party in possession. *Held* that, notwithstanding that the procedure of the Magistrate was in some respects defective, there was no cause for the exercise of the revisional jurisdiction of the High Court, inasmuch as the parties had been given an opportunity of representing their respective cases, and there was nothing to show that the irregularities in procedure which had occurred had caused any prejudice to either. *In the matter of the petition of T. A. Martin* (1) referred to.

THIS was an application to revise an order made under section 145 of the Code of Criminal Procedure. It would appear that the matter originated by a police report that there was likely to be a breach of the peace between two brothers owing to a dispute about land and asking that proceedings should be taken under section 107 and also under section 145. On the 17th of September 1906 the Deputy Magistrate issued notices to the parties under section 107 to show cause why the parties should not be bound over to keep the peace. On the 5th of October 1906 the case came on, and the Court, finding that the dispute was really a dispute about land, ordered the proceedings to come on under section 145. Statements had been put in by both parties in the proceedings under section 107. The parties attended in Court, the patwari was examined, and the Court, finding that the opposite party had proved their possession, made an order providing for the possession of the opposite party. Against this order Debi Prasad applied in revision to the High Court.

Mr. *W. Wallach*, for the applicant.

Mr. *M. L. Agarwala*, for the opposite party.

RICHARDS, J.—This was an application to revise an order made under section 145 of the Code of Criminal Procedure. It

* Criminal Revision No. 248 of 1907, against an order of Nizam-ud-din Ahmad, first class Magistrate of Ghazipur, dated the 18th of February 1907.

(1) (1904) I. L. R., 27 All., 296.

1907

DEBI PRASAD v. SHRODAT RAI.

would appear that the matter originated by a police report that there was likely to be a breach of the peace between two brothers owing to a dispute about land and asking that proceedings should be taken under section 107 and also under section 145. On the 17th of September 1906 the Deputy Magistrate issued notices to the parties under section 107 to show cause why the parties should not be bound over to keep the peace. On the 5th of October 1906 the case came on, and the Court, finding that the dispute was really a dispute about land, ordered the proceedings to come on under section 145. Statements had been put in by both parties in the proceedings under section 107. The parties attended in Court, the patwari was examined, and the Court finding that the opposite party had proved their possession, made an order providing for the possession of the opposite party. Of course the order of the Magistrate is made without reference to the merits of the claim of either of the parties, and they are entitled to take such proceedings as they think right to have their real title ascertained and declared. The object of the section is merely to prevent a breach of the peace by maintaining one or other of the parties in the possession which the Court finds they had immediately before the dispute. In the present case the provisions of section 145 were not strictly complied with. The parties being in Court and the order being made in their presence the Court did not direct that they should be served personally. No notice of the order was fixed to any place at or near the subject of dispute. It certainly would be well that all Magistrates proceeding under section 145 should in all cases strictly comply with the various provisions of the section, and if I could find that the applicants here had been in the smallest way prejudiced by any omission to comply with the provisions of the section, I should feel bound to set aside the order complained of. Orders made by the Magistrates are not under ordinary circumstances liable to be revised by the High Court. There is an express provision in section 435 of the Code of Criminal Procedure that the Court cannot under that section deal with proceedings under chapter XII (in which section 145 is included). It has, however, been held in Criminal Reference No. 189 of 1903, that the High Court can under certain circumstances interfere with

orders purporting to be made under section 145, and this ruling was followed and to some extent extended in the case of *T. A. Martin* (1). The facts in Criminal Reference No. 189 of 1903 are somewhat similar to the facts in the present case, and, as I have already said, whatever my individual view of the provisions of section 435 might be, I should follow that ruling and set aside the order if I found that the applicant had been in any way prejudiced by the order. In the present case, however, I am quite satisfied that there was a dispute about land; that there was an apprehension of a breach of peace arising out of this dispute about land, and I find also that the parties interested in the dispute appeared and had their case fully heard before the Deputy Magistrate. The order he made is dated the 18th of February 1907, and the present application was not filed until the 18th of May following. It also appears that it took 13 days to get a copy of the judgment; but, even allowing for this time, a very considerable period was allowed to elapse before any steps were taken to set aside the order of the Deputy Magistrate. All the provisions of section 145 which were not complied with are provisions enacted for the purpose of enabling both parties to the dispute to have their respective cases fully heard by the Court after due notice. In the present case the parties had notice and had their respective cases fully heard, and the learned counsel for the applicant admits that he is unable to point out, or even suggest, any injury suffered by his clients due to the non-compliance with the provisions of the section. Section 537 of the Code of Criminal Procedure expressly provides that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity, unless such irregularity has in fact occasioned a failure of justice. I think it would be an extremely technical reading of this section to hold that the order passed by the learned Deputy Magistrate was not an order of a Court of competent jurisdiction merely because there were irregularities in part of the procedure causing no injury to either party. Under any circumstance it is a matter entirely in the discretion of this Court whether or not it will in revision set aside an order, and in exercise of this

(1) (1904) I. L. R., 27 All., 296.

1907

DEBI PRASAD v. SHEODAT RAI.

discretion I refuse in the present case to set aside the order. With the consent of both parties I make an express direction that the order of the Magistrate shall be deemed to apply only to plot No. 58. Inasmuch as I consider that it is of the greatest importance that Magistrates should strictly comply with the provisions of the Code, I direct that a copy of this judgment be sent to the Deputy Magistrate who tried the case. The application is rejected.

1907
July 20.

APPELLATE CIVIL.

Before Mr. Justice Dillon.

BANWARI LAL AND OTHERS (PLAINTIFFS) *v.* MUSAMMAT GOPI (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 199 *(a)—Limitation —Defendant referred to Civil Court—Act No. XV of* 1877 *(Indian Limitation Act), schedule II, article* 120.

When, under section 199 of the Agra Tenancy Act, 1901, an order is passed by a Revenue Court directing the defendants to file a suit in a Civil Court within the time limited by that section, the ordinary period of limitation is thereupon suspended and the special period provided by the Tenancy Act is substituted.

The defendants filed a suit in the Civil Court within three months. It was decided against them. They appealed, and in appeal withdrew their suit with liberty to bring a fresh suit. *Held* that the fresh suit, filed after the expiry of the period limited by the order of the Revenue Court, was barred, and the defendants could not fall back upon the provisions of the Indian Limitation Act, 1877.

THE facts of this case are as follows :—

One Manick Chand, ancestor of the defendant respondent, instituted a suit against the plaintiffs in the Revenue Court for arrears of rent in respect of two groves situated in mauza Bithri. In that suit the present plaintiffs, who were then defendants, pleaded that they had proprietary rights in the grove in question. Thereupon the Revenue Court passed an order on the 13th of November 1903, under section 199, clause (*a*) of Act No. II of 1901, requiring them to institute a suit within three months in the Civil Court for the determination of such question of title. They accordingly instituted a suit in the Civil Court, which was

* Second Appeal No. 505 of 1906, from a decree of Pitambar Joshi, Subordinate Judge of Bareilly, dated the 24th of March 1906, reversing a decree of Udit Narain Singh, Munsif of Havali, Bareilly, dated the 27th of June 1905.